

SOFTWARE DEVELOPERS WANT CHANGES IN PATENT AND COPYRIGHT LAW†

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I. ARTICLE

Burton Systems Software released the results of a poll of computer programmers which reveals widespread dissatisfaction with the current state of U.S. patent and copyright law.

Burton surveyed professional software developers who attended the Software Development '94 East trade show in Washington, D.C. on October 4-6, 1994. Visitors to Burton's booth were asked about two controversial areas of intellectual property law: patents on computer software and copyrights on the "look and feel" of software user interfaces.

The results were startling. By lopsided margins ranging from over 2-to-1 to more than 10-to-1, the software developers said that both software patents and "look and feel" copyrights impede software development and should be abolished.

"The U.S. Constitution authorizes patents and copyrights to promote the progress of science and the useful arts," said Dave Burton, President of Burton Systems Software. "Yet the people responsible for that progress say that both software patents and 'look and feel' copyrights do just the opposite. That's quite an indictment of the current law."

By 79.6% to 8.2%, the computer programmers said that granting patents on computer software impedes, rather than promotes, software development. (The remaining 12.2% were undecided.) By 59.2% to 26.5%, most went even further, saying that software patents should be abolished outright. (Current U.S. law allows the patenting of computer software algorithms, but many other nations do not recognize such patents.)

† Originally submitted as a position paper for an online panel discussion.

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The programmers are even more strongly opposed to copyrights on the “look and feel” of software user interfaces. By 85.7% to 8.2%, they think that such copyrights impede, rather than promote, software development. By 77.6% to 14.3%, they want to abolish such copyrights.

Patents and copyrights grant inventors and authors legal monopolies, providing increased financial profits as a reward—and incentive—for advancing “the useful arts.” The results of this survey are especially striking because it is the developers of new technology, the very people whom Burton polled, whose financial interests are supposed to be protected by patents and copyrights.

Most software developers do not oppose all software copyrights. There is broad support for basic copyright protection of computer programs which prohibits directly copying computer programs without the author’s permission. Nearly all commercial software is copyrighted, and most programmers agree that such protection is necessary in order for software development to be profitable.

However, software patents and “look and feel” copyrights go well beyond this to prohibit other programmers from independently writing even programs that are similar to the protected program. Such constraints are strongly resented by many in the software development community who long for the good old days when they were free to write whatever programs they wanted without fear of lawsuits.

In recent years, a wave of such lawsuits has shaken the industry involving companies like IBM, Microsoft, Apple, Lotus, Borland, and many others.

“Software patents and ‘look and feel’ copyrights make lawsuits inevitable,” said Burton, “because developers can never be sure just what they may legally write. Until the government started issuing software patents and ‘look and feel’ copyrights, we operated under a very simple rule: if you wrote it, it was yours. But now, it takes a lawsuit to answer the question of who owns your computer program.”

II. DETAILS OF THE POLL

At our booth at the Software Development trade show on October 4–6, 1994 in Washington, D.C., Burton Systems Software conducted a poll to find out what software development professionals think of software patents and “look and feel” user interface copyrights.

Fifty-six people filled out the survey, but seven indicated that they were not programmers. The remaining forty-nine constitute a rather small polling sample, but the results are so lopsided that we think they

are worth reporting anyhow. By margins ranging from more than 2-to-1 to over 10-to-1, professional software developers say that:

- (1) Software patents impede, rather than promote, software development (by 10-to-1).
- (2) Software patents should be abolished (by 2.2-to-1).
- (3) “Look and feel” user interface copyrights impede software development (by 10-to-1).
- (4) “Look and feel” user interface copyrights should be abolished (by 5.4-to-1).

The detailed results are as follows:

(Q) Are you a programmer and/or a manager of programmers?

(A) 87.5% (49 people) said they were programmers or both or yes.

9.3% (5) said they were managers, not programmers.

3.6% (2) were neither programmers nor managers of programmers.

(Q) The U.S. Constitution authorizes the government to issue patents and copyrights “to promote the progress of science and the useful arts.” Do you think software patents promote or impede software development?

(A) The 49 programmers said:

Impedes: 79.6% (39)

Promotes: 8.2% (4)

No clear answer: 12.2% (6)

The 7 non-programmers said:

Impedes: 1

Promotes: 5

No answer: 1

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(Q) Many other countries do not allow software patents. Do you think the U.S. should abolish software patents?

(A) The programmers said:

Abolish: 59.2% (29)

Don't abolish: 26.5% (13)

No clear answer: 14.3% (7)

The 7 non-programmers said:

Abolish: 0

Don't abolish: 6

No answer: 1

(Q) Do you think "look and feel" copyrights promote or impede software development?

(A) The programmers said:

Impedes: 85.7% (42)

Promotes: 8.2% (4)

No clear answer: 6.1% (3)

The 7 non-programmers said:

Impedes: 4

Promotes: 2

No answer: 1

(Q) Should the U.S. abolish "look and feel" U.I. copyrights?

(A) The programmers said:

Abolish: 77.6% (38)

Don't abolish: 14.3% (7)

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No clear answer: 8.2% (4)

The 7 non-programmers said:

Abolish: 4

Don't abolish: 2

No answer: 1

(Q) Do you do patent searches before publishing/selling your software?

(A) The 49 programmers said:

Yes: 6.1% (3)

Sometimes: 18.4% (9)

No: 67.3% (33)

No clear answer: 8.2% (4)